

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Respondent,

No. 1:07-cr-213

-v-

HONORABLE PAUL L. MALONEY

LARRY HOOKS,
Petitioner.

ORDER GRANTING DEFENDANT HOOKS' 42 U.S.C. § 2255 PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner Larry Hooks (Defendant), through his attorney, filed a petition for a writ of habeas corpus under 42 U.S.C. § 2255.¹ (Dkt. No. 289.) Defendant requests the court resentence him because certain information was improperly included in his presentence investigation report (PSR) and was used to enhance his sentence. Defendant pled guilty to the first count in a superceding indictment, a PSR was prepared, and Defendant was sentenced. Included in the PSR were facts relating to a prior conviction, which has since been dismissed due to improper conduct by an investigating officer. The government does not oppose Defendant's request for resentencing and agrees Defendant should be resented based on an updated report that redacts or otherwise amends the PSR to reflect the disposition and dismissal of the prior conviction. The dismissal of the prior state conviction used to enhance a federal sentence is a sufficient reason to grant a § 2255 petition. *See Johnson v. United States*, 544 U.S. 295, 302-303 (2005).

¹ Defendant, on his own, also filed a "motion to reduce sentence." (Dkt. No. 290.) Defendant raises the same arguments as his attorney. Defendant asks to be resented, but specifies that he should be resented at the lowest end of the guidelines. Because Defendant is represented by counsel, the court will not consider Defendant's *pro per* submission. The court orders the Clerk to **REJECT** Defendant's *pro per* motion (Dkt. No. 290) and return the document to Larry T. Hooks. Defendant is not prejudiced as his filing is redundant.

Therefore, Defendant's petition (Dkt. No. 289) is **GRANTED** and his sentence is **VACATED**. A resentencing hearing has been scheduled for **April 12, 2010 at 1:30 p.m.** Counsel for the government shall prepare the necessary paperwork to ensure Defendant's presence at the hearing. The Probation Office is **ORDERED** to prepare a modified presentence investigation report, to be used by this court in sentencing, which reflects the appropriate disposition of Defendant's prior conviction and redacting or otherwise amending the PSR accordingly. **IT IS SO ORDERED.**

Date: March 1, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge